

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>W.R. GRACE &amp; CO., <i>et al.</i>,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (KJC)</b>
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**FEE AUDITOR’S FINAL REPORT REGARDING FINAL FEE APPLICATION OF THE  
ESTATE OF DAVID T. AUSTERN, FORMER ASBESTOS PI FUTURE CLAIMANTS’  
REPRESENTATIVE, BY HIS PERSONAL REPRESENTATIVE, FOR (I) ALLOWANCE  
OF COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF  
EXPENSES INCURRED FROM MAY 24, 2004 THROUGH JUNE 30, 2012 AND (II)  
WAIVER OF CERTIFICATION REQUIREMENT OF LOCAL RULE 2016-2(G)**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Final Fee Application of the Estate of David T. Austern, Former Asbestos PI Future Claimants’ Representative, by His Personal Representative, for (I) Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred from May 24, 2004 through June 30, 2012 and (II) Waiver of Certification Requirement of Local Rule 2016-2(g) (the “Application”).

**BACKGROUND**

1. David T. Austern (“Mr. Austern”) was retained as the Legal Representative for Asbestos Personal Injury Future Claimants until his death on May 16, 2013. In the Application, the Personal Representative for Mr. Austern’s Estate (the “Estate”) seeks final approval of fees totaling

\$332,700.00<sup>1</sup> and expenses totaling \$19,209.39<sup>2</sup> for his services from May 24, 2004 through June 30, 2012 (the "Final Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2014, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals.

## **DISCUSSION**

### **Prior Interim Applications**

3. We note that we previously filed the following final reports for Mr. Austern's prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on Mr. Austern's prior interim fee applications:

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<sup>1</sup>We note that the total of the fees requested in Mr. Austern's 31 prior fee applications is \$332,700.00. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 3, and thus the Estate has deducted no sums from this amount to arrive at the figure it seeks of \$332,700.00. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

<sup>2</sup>We note that the total of the expenses requested in Mr. Austern's 31 prior fee applications is \$19,596.39. It appears that the Estate has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 3, to arrive at the figure it seeks of \$19,209.39. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

- 13<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirteenth Interim Period (Docket #7013), filed on or about November 22, 2004, in which we recommended approval of fees totaling \$8,950.00 and expenses totaling \$28.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirteenth Period, dated January 26, 2005 (Docket #7622).
- 14<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Fourteenth Interim Period (Docket #7982), filed on or about March 8, 2005, in which we recommended approval of fees totaling \$16,150.00 and expenses totaling \$273.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fourteenth Interim Period, dated March 22, 2005 (Docket #8081).
- 15<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Fifteenth Interim Period (Docket #8561), filed on or about June 6, 2005, in which we recommended approval of fees totaling \$21,300.00 and expenses totaling \$53.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fifteenth Period, dated June 29, 2005 (Docket #8728).
- 16<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Sixteenth Interim Period (Docket

#9387), filed on or about September 12, 2005, in which we recommended approval of fees totaling \$2,400.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Sixteenth Period, dated September 27, 2005 (Docket #9513).

17<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Seventeenth Interim Period (Docket #11168), filed on or about November 28, 2005, in which we recommended approval of fees totaling \$2,100.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Seventeenth Period, dated December 21, 2005 (Docket #11402).

18<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of David T. Austern for the Eighteenth Interim Period (Docket #16009), filed on or about June 11, 2007, in which we recommended approval of fees totaling \$400.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Twenty-Third Period, dated June 20, 2007 (Docket #16105).

19<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Nineteenth Interim Period (Docket #12525), filed on or about May 25, 2006, in which we recommended approval of fees totaling \$3,900.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Nineteenth Period, dated June 16, 2006 (Docket #12660).

20<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twentieth Interim Period (Docket #13183), filed on or about September 8, 2006, in which we recommended approval of fees totaling \$12,100.00 and expenses totaling \$1,377.45. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twentieth Period, dated September 26, 2006 (Docket #13298).

21<sup>st</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-First Interim Period (Docket #13963), filed on or about December 8, 2006, in which we recommended approval of fees totaling \$10,550.00 and expenses totaling \$1,403.20. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-First Period, dated December 19, 2006 (Docket #14069).

22<sup>nd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Second Interim Period (Docket #14868), filed on or about March 15, 2007, in which we recommended approval of fees totaling \$7,050.00 and expenses totaling \$222.48. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Second Period, dated May 3, 2007 (Docket #15494).

23<sup>rd</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee

Applications with No Fee or Expense Issues for the Twenty-Third Interim Period (Docket #16037), filed on or about June 13, 2007, in which we recommended approval of fees totaling \$13,750.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Twenty-Third Period, dated June 20, 2007 (Docket #16105).

24<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Fourth Interim Period (Docket #16786), filed on or about September 10, 2007, in which we recommended approval of fees totaling \$15,000.00 and expenses totaling \$531.92. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fourth Period, dated September 25, 2007 (Docket #16916).

25<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Fifth Interim Period (Docket #17542), filed on or about December 4, 2007, in which we recommended approval of fees totaling \$8,900.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fifth Period, dated December 13, 2007 (Docket #17629).

26<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Sixth Interim Period (Docket #18176), filed on or about February 29, 2008, in which we recommended approval of fees totaling \$18,650.00 and expenses totaling \$1,499.89. These

recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Sixth Period, dated March 12, 2008 (Docket #18270).

27<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of David T. Austern for the Twenty-Seventh Interim Period (Docket #18799), filed on or about May 28, 2008, in which we recommended approval of fees totaling \$14,800.00 and expenses totaling \$1,268.27, reflecting our recommended reduction in expenses of \$289.00, as further explained in paragraph 3 of that final report. The Court approved \$20,500.00 in fees and \$1,268.27 in expenses in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Period, dated June 23, 2008 (Docket #18989).

28<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Eighth Interim Period (Docket #19535), filed on or about September 15, 2008, in which we recommended approval of fees totaling \$29,300.00 and expenses totaling \$3,527.13. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Eighth Period, dated October 1, 2008 (Docket #19663).

29<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Ninth Interim Period (Docket #20150), filed on or about November 26, 2008, in which we recommended approval of fees totaling \$10,850.00 and expenses totaling \$1,099.52. These

recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Ninth Period, dated December 17, 2008 (Docket #20283).

- 30<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirtieth Interim Period (Docket #21063), filed on or about March 21, 2009, in which we recommended approval of fees totaling \$16,750.00 and expenses totaling \$2,203.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirtieth Period, dated April 2, 2009 (Docket #21173).
- 31<sup>st</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-First Interim Period (Docket #22047), filed on or about June 10, 2009, in which we recommended approval of fees totaling \$12,250.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-First Period, dated July 7, 2009 (Docket #22354).
- 32<sup>nd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Second Interim Period (Docket #23240), filed on or about September 15, 2009, in which we recommended approval of fees totaling \$9,300.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Thirty-Second Period, dated September 28, 2009 (Docket #23352).
- 33<sup>rd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications



with No Fee or Expense Issues for the Thirty-Third Interim Period (Docket #23927), filed on or about December 3, 2009, in which we recommended approval of fees totaling \$32,800.00 and expenses totaling \$1,166.43. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Third Period, dated December 11, 2009 (Docket #23996).

34<sup>th</sup> Period: Fee Auditor's Final Report Regarding Quarterly Interim Application of David T. Austern for Compensation and Reimbursement of Expenses for the Period of July 1, 2009 through September 30, 2009 (Docket #24364), filed on or about February 26, 2010, in which we recommended approval of fees totaling \$37,850.00 and expenses totaling \$2,148.92, reflecting our recommended reduction of \$98.00 in expenses, as further explained in paragraph 3 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Fourth Period, dated March 19, 2010 (Docket #24470).

36<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Sixth Interim Period (Docket #25384), filed on or about September 10, 2010, in which we recommended approval of fees totaling \$1,100.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Thirty-Sixth Period, dated September 13, 2010 (Docket #25397).

- 37<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$1,900.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).
- 39<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Ninth Interim Period (Docket #27116), filed on or about June 21, 2011, in which we recommended approval of fees totaling \$1,800.00 and expenses totaling \$724.90. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Ninth Period, dated June 30, 2011 (Docket #27188).
- 40<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Fortieth Interim Period (Docket #27507), filed on or about August 25, 2011, in which we recommended approval of fees totaling \$3,200.00 and expenses totaling \$824.40. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fortieth Period, dated September 20, 2011 (Docket #27622).
- 41<sup>st</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-First

Interim Period (Docket #28070), filed on or about December 2, 2011, in which we recommended approval of fees totaling \$2,950.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Forty-First Period, dated December 14, 2011 (Docket #28150).

42<sup>nd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Second Interim Period (Docket #28548), filed on or about February 20, 2012, in which we recommended approval of fees totaling \$3,150.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Forty-Second Period, dated March 23, 2012 (Docket #28705).

43<sup>rd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Third Interim Period (Docket #28900), filed on or about May 9, 2012, in which we recommended approval of fees totaling \$1,750.00. This recommendation was adopted in the Order Approving Quarterly Fee Applications for the Forty-Third Period, dated June 14, 2012 (Docket #29054).

44<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Fifth Interim Period (Docket #29988), filed on or about December 4, 2012, in which we recommended approval of fees totaling \$2,900.00 and expenses totaling \$441.00. These recommendations were adopted in the Order

Approving Quarterly Fee Applications for the Forty-Fifth Period, dated December 11, 2012 (Docket #30036).

45<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Fifth Interim Period (Docket #29988), filed on or about December 4, 2012, in which we recommended approval of fees totaling \$3,150.00 and expenses totaling \$475.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Fifth Period, dated December 11, 2012 (Docket #30036).

4. We have reviewed the final reports and orders allowing fees and expenses for the prior interim periods, and we do not believe there is any reason to change any of the amounts awarded for the prior interim periods, with the exception of the Twenty-Fourth Interim Period. Mr. Austern sought approval of expenses totaling \$473.80 for that period, however, expenses of \$531.92 were approved in the order submitted to the Court.<sup>3</sup> Thus, the expenses awarded to the Estate for the Twenty-Fourth Interim Period should be reduced by \$58.12. However, because the Estate used the correct expense amount of \$473.80 in calculating its final expense request, no additional reduction to the Estate's final expense request is necessary.

## CONCLUSION

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<sup>3</sup>The expense detail attached to the application for the Twenty-Fourth Interim Period supported expenses of \$531.92. However, Mr. Austern had agreed with the Fee Auditor to accept a \$58.12 expense reduction for the Twenty-Third Interim Period. Since the order for that period had already been entered, Mr. Austern deducted the \$58.12 from his expenses for the Twenty-Fourth Interim Period, making that period's expenses \$473.80.

5. Thus, we recommend final approval of \$332,700.00<sup>4</sup> in fees and \$19,209.39<sup>5</sup> in expenses for Mr. Austern's services for the Final Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**



By: \_\_\_\_\_  
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**FEE AUDITOR**

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<sup>4</sup>We note that the total of the fees requested in Mr. Austern's 31 prior fee applications is \$332,700.00. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 3, and thus the Estate has deducted no sums from this amount to arrive at the figure it seeks of \$332,700.00. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

<sup>5</sup>We note that the total of the expenses requested in Mr. Austern's 31 prior fee applications is \$19,596.39. It appears that the Estate has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 3, to arrive at the figure it seeks of \$19,209.39. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 17th day of July, 2014.

A handwritten signature in blue ink, appearing to read "W-H Smith", is positioned above a horizontal line.

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Warren H. Smith

## **SERVICE LIST**

### **Notice Parties**

#### **The Applicant**

Marilyn Austern  
Personal Representative of the Estate of David T.  
Austern, Former FCR  
c/o Earl Colson  
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#### **The Debtors**

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